

Case No. 7,518.
[3 Dill. 245.]¹

JORDAN v. CASS COUNTY.

Circuit Court, W. D. Missouri.

1875.²

TOWNSHIP BONDS—BRANCH RAILROAD ACT.

1. Bonds negotiable in form, issued by a county in Missouri, on behalf of a township therein, reciting that they “are issued by the order of the county court, made by authority of an act of the general assembly of Missouri, entitled ‘An act to facilitate the construction of railroads in the state of Missouri,’ approved March 23, 1868, and authorized by a vote of more than two-thirds of the voters in said township, to aid in the construction of the Pleasant Hill & Lawrence Branch of the Pacific Railroad, of Missouri,” said railroad having legal power to build branches and receive such subscriptions, are valid in the hands of a holder for value without actual notice of the facts relied on to defeat a recovery on such bonds.
2. The proceedings of the county court in this case, considered by Krekel, J., to be binding even if the bonds were in the hands of the original takers thereof.

The coupons sued on [by Elizabeth J. Jordan] are from bonds issued by Cass county on behalf of Mt. Pleasant township, in that county, to the Pacific Railroad Company, of Missouri, a corporation created by an act of the general assembly (Sess. Acts Mo. 1849, p. 220), and authorized to build branches to any point in any county in which the road might run. At the time of the issue of the bonds, and when the steps preliminary thereto were taken, a part of its road was constructed in Cass county. The company therefore was authorized to build a branch in that county, and on the 15th day of June, 1869, formally announced its intention to build a branch to the western limits of the county, to be known as the Pleasant Hill & Lawrence Branch of the Pacific Railroad. This was done by filing in the office of the secretary of state, in pursuance of the branch railroad law of March 23, 1868, an offer to Cass county and all other interested to build said branch. The bonds now in question recite that they “are issued under and pursuant to an order of the Cass county court, made by authority of an act of the general assembly of Missouri, entitled ‘An act to facilitate the construction of railroads in the state of Missouri,’ approved March 23, 1868, and authorized by a vote of more than two-thirds of the voters of said township, to aid in the construction of the Pleasant Hill & Lawrence Branch of the Pacific Railroad, of Missouri.” The county court records show, that the proceedings preliminary to the issue of the bonds were taken strictly in pursuance of the statute. 1 Wag. St. 313, § 51. There was a petition of more than twenty-five tax payers and residents of the township presented to the court, praying it to submit to a vote of the qualified voters of the township the question of subscribing \$25,000 to the capital stock of the Pacific Railroad Company, which proposes to build a railroad through said township, to be known as the Pleasant Hill & Lawrence Branch of the Pacific Railroad. Thereupon an order was made in accordance with the prayer of the petition, and the sheriff was directed to give notice

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of the election, which was fixed for the 13th of July, 1869. The election was duly held, and more than two-thirds of the qualified voters of said township, voting thereat, voted in favor of the subscription. The court thereupon ordered the subscription to be made to the capital stock of the Pacific Railroad and the bonds to be issued. Before anything further was done, the Pacific Railroad Company appeared by its attorney, and offered the court a contract for building the branch, the only part of which material to be noticed is the following: "It being distinctly understood and mutually agreed by and between the parties hereto, that the stock so to be issued shall be stock in the branch railroad, and none other, as provided by an act of the general assembly of the state of Missouri, entitled 'An act to aid the building of branch railroads in the state of Missouri,' approved March 23, 1868." This contract was at first rejected by the court on account of this obnoxious clause. Subsequently petitions were presented signed by more than two-thirds of the qualified voters of the township, in which the petitioners state to the court that "whereas, there are ambiguities and uncertainties in said original petition as to the meaning

thereof, * * * * we represent that it was the understanding, meaning, object, and design of your petitioners for said bonds to be issued to said Pacific Railroad, and that the certificates of stock to be issued and provided therefor as provided by law be issued on the stock of said branch road, all of which we hold legal and binding on us, and pray the court to act according to the premises aforesaid." Thereupon the contract offered by the Pacific Railroad Company was accepted, the branch stock received, and the bonds issued and delivered to the Pacific Railroad Company, which forthwith built the branch road. The next step was an order for a levy of a tax of 8–10 of one per cent upon the township to pay the interest to accrue. This order was repeated in each of the years 1870, 1871 and 1872. In the latter year an order was made for the funding of such coupons as then remained unpaid, amounting to some \$1,500; the rest had been paid amounting to about \$3,500, gold. Finally the revoking order of February, 1873, was made. By this it appears that some of the taxes had been paid, and some remained unpaid. It appears from one of the orders, that the stock held by the company was voted on one occasion by commissioners appointed by the court. The plaintiff is the holder of the coupons in suit for value, and without notice of any informality or illegality in the issue of the bonds, except so far as notice is imputed by law.

T. K. Skinker, for plaintiff.

Gage & Ladd, for defendant.

[Before DILLON, Circuit Judge, and KREKEL, District Judge.]

KREKEL, District Judge. 1. One view of this case is, had the county court of Cass county power to subscribe to, and accept, the stock of the Pleasant Hill & Lawrence Branch road, when the petition under which the order to submit the question of subscription to the voters was made, stated "that they desire as a township, to subscribe twenty-five thousand dollars to the capital stock of the Pacific Railroad Company which proposes to build a railroad through said township, to be known as the Pleasant Hill & Lawrence Branch of the Pacific Railroad?"

The order of submission followed the petition. If the necessary two-thirds vote under this petition and order, favorable to the subscription, was given, I am of opinion that the court was authorized to subscribe to and accept the stock in the branch. The petition itself, in other parts than those quoted, abundantly shows that the proceeding was had under the act of 23d of March, 1868 (page 92, Sess. Acts 1868),—for prior to that time no law authorizing townships to subscribe stock to a railroad existed in Missouri.

The petition says that "the Pacific Railroad Company proposes to build a railroad through the township." The proposition here spoken of is verified by the resolution of the board of directors of the Pacific Railroad Company, filed with the secretary of state on the 15th day of June, 1869—after the petition, but prior to the day of election—declaring in favor of building the branch road as authorized and required by the act of the 23d

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of March, 1868 (page 90, Sess. Acts 1868). From the proceedings of the tax-payers, the action of the county court of Cass county, as well as the action of the Pacific Railroad board, it is very evident that all were acting under the acts cited and attempting to comply with the provisions thereof.

The tax-payers in their petition for submission, employ the very words of the first section of the act of the 23d of March, 1868, "proposing to build." The authority of the first section is, "to subscribe to the capital stock of any railroad company of this state," and this, taken together with the petition and order, that the subscription is to be made for the construction of the Pleasant Hill & Lawrence Branch of the Pacific Railroad, it may well be, that had the Pacific Railroad Company accepted the subscription to its stock, it would have been bound only to issue stock as of the branch. This view gains strength from a close examination of the second section of the act of the 23d of March, 1868, which provides, that a railroad may receive "subscriptions to stock to aid in its construction in the name of such branch, which shall be expressed in the certificate of stock issued." The third and fourth sections of the act last cited are in harmony with this view, and indeed tend to support it.

The authority to subscribe to and accept the stock of the branch road is then not only justified by the law, but in strict compliance with the design and intention of the taxpayers and the order of the court. In the petition of two-thirds of the tax-payers of the township, they declared this to have been their understanding, and though such a petition cannot be substituted for a two-thirds vote required by law, yet it shows, at least, that the question now raised is a technical one.

2. But supposing the views above expressed should be erroneous, the question arises, in how far are innocent holders of bonds for value affected by the proceedings had in the premises. Here is a bond reciting the law and the facts required to make it a vital commercial obligation payable to bearer—is the purchaser of such bond bound to make inquiry and ascertain whether the issuer of the instrument set out the truth, when the facts at least were peculiarly within its reach, and under the law to be ascertained by the county court, and it alone?

The power being conferred on the county court by law to issue the bonds on a given state of facts, to be ascertained by it is either an untruthful statement of the facts on the face of the bonds, or even an erroneous exercise of an unquestionable legal power to affect an innocent holder for value?

There has been no actual notice to the plaintiff of any irregularity, if such has occurred. The proceedings in court and the filing of the declaration of intention to build the branch road by the Pacific Railroad Company in the secretary of state's office, impart no constructive notice. The levy and collection of taxes, and the payment of coupons for several years show beyond question how the matter was viewed by all the parties, and though such acts might not estop the defense here interposed, if legal authority was entirely wanting in the county court to issue the bonds, yet they strongly tend to show the wrong that would be done to permit a technicality to stand in the way of substantial justice. In my view the case is with the plaintiff.

DILLON, Circuit Judge. I concur in the result, on the second ground stated in the foregoing opinion of KREKEL, District Judge, without giving any opinion on the view first therein expressed. Judgment for plaintiff.

{NOTE. This case was reviewed in error by the supreme court. Mr. Chief Justice Waite, in delivering the opinion of the court, said: "It appears with reasonable certainty that the vote of the township was for a subscription to aid in the construction of the branch road, and was intended to authorize the taking of the stock in the Pacific Railroad set apart, under Act March 21, 1868, to the Pleasant Hill & Lawrence Branch." The opinion in this case is very short, and refers to the case of Cass County v. Johnson, in which the opinion is also delivered by Mr. Chief Justice Waite, and in which he decides that the subscriptions of Cass county are valid, as are also the bonds. The township aid act (1 Wagner's St. 313) of Missouri is not repugnant to the constitution of that state; and, further, that although the bonds may be in fact the bonds of the township, yet an action may be maintained upon them against the county. Upon this last point the learned chief justice says: "The reasoning of the learned circuit judge in *Jordan v. Cass* (Case No. 7,517) is to our minds perfectly conclusive, and we content ourselves with a simple reference to that case as authority upon that point" *Cass County v. Johnson*, 95 U. S. 360; *Same v. Jordan*, Id. 373.]

¹ [Reported by Hon. John P. Dillon, Circuit Judge, and here reprinted by permission.]

² [Affirmed in 95 U. S. 373.]